IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/04/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.2354 OF 2003
AND
CRL.M.P.NO.866 OF 2003.

A.Dhanavathi Ammal ... Petitioner

-Vs-

State,
rep.by The Inspector of Police,
Vigillance & Anti-Corruption Unit,
Pondicherry.
(Cr.No.8/2000) ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.K.Venkatapathy,
Senior Counsel for
Mr.P.Wilson

For respondent : Mr.D.Murugesan,
Public Prosecutor (Pondicherry)

:O R D E R
Petitioner, who is the second accused in the case in Cr.No.8/2000, has filed the above criminal original petition praying to call for the records in the said case from the file of the respondent and quash the same on averments such as that the petitioner is the Deputy Secretary to Government, Union Territory of Pondicherry; that on 24.10.2 000, the District Registrar of Pondicherry lodged a complaint against the sister of the petitioner before the respondent complaining commission of various offences under the Indian Penal Code on allegation that with the view to default one Ravichandran, she prepared forged power of attorney with the assistance of the Sub Registrar, Oulgaret in which the petitioner has also been arrayed as an accused on ground that she favoured the offence by misuse of her official position.

2. The petitioner would further submit that the respondent, on the basis of the said complaint, registered the said case on 27.10.2000 under Sections 468,471 and 419 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988; that the petitioner was granted anticipatory bail by

this Court and in the Crl.O.Ps.23834 of 2000 and 3277 of 2001 respectively filed by her sister and herself, this Court, by order dated 20.9.2002, directed the Investigating Officer to continue with the investigation and to file a report since the same was in progress; that the respondent has now completed the investigation and even though no material was available against the petitioner, the respondent is dragging the matter at the instance of those who are illdisposed of with her in order to keep the matter alive so as to stall her legitimate promotion. On such averments, the petitioner has come forward to file the above criminal original petition.

3. During arguments, the learned senior counsel appearing on behalf of the petitioner, besides laying emphasis on the factual position of the case brought forth in the above criminal original petition, would also submit the following judgments:

1. SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, WEST BENGAL vs. MOHAN SINGH AND OTHERS (1975 SCC (Cri) 156)

2.PEPSI FOODS LTD. AND ANOTHER vs. SPECIAL JUDICIAL MAGISTRATE AND OTHERS (1998 SCC (Cri) 1400)

3.G.SAGAR SURI AND ANOTHER vs. STATE OF U.P. AND OTHERS ((2000) 2 SCC 636)

4.DINESH DUTT JOSHI vs. STATE OF RAJASTHAN AND ANOTHER ((2001) 8 SCC 570)

5.SUNIL KUMAR vs. ESCORTS YAMAHA MOTORS LTD. AND OTHERS ((1999) 8 SCC 468)

6.MADHAVRAO JIWAJI RAO SCINDIA AND ANOTHER ETC. vs. SAMBHAJIRAO CHANDROJIRAO ANGRE AND OTHERS ETC. (1988 CRL.L.J.853 = AIR 1988 SC 709)

4. The first judgment cited above is on the question whether the High Court is competent to entertain the second petition under Section 561A of the Cr.P.C. (now equivalent to Section 482 Cr.P.C.) and the State was of the view that once the High Court has rejected the earlier application for quashing the proceedings, it was not competent to entertain another application for the same purpose as that would amount to reviewing its earlier order, which the High Court had no jurisdiction to do. In the above circumstances, the Honourable Apex Court has held:

"Section 561A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must therefore exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked....

The High Court, was in the circumstances, entitled to entertain the subsequent application of respondents Nos.1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice....

The facts and circumstances obtaining at the time of the subsequent application of respondents Nos.1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years. It was for this reason that, despite the earlier order, the High Court proceeded to consider the subse quent application of respondents Nos.1 and 2 for the purpose of deciding whether it should exercise its inherent jurisdiction under Section 561A. This the High Court was perfectly entitled to do and there is no jurisdictional infirmity in the order of the High Court. Even on the merits, the order of the Highs Court was justified as no prima facie case appeared to have been made out against respondents Nos.1 and 2."

5. The second judgment cited above is regarding the scope of the power of the High Court to quash the criminal proceedings in exercise of power under Articles 226 and 227 of the Constitution or under Section 482 of the Code of Criminal Procedure and it is held therein that the power of the Court to discharge the accused at the stage of framing of the charge or existence of remedy of appeal and revision are not a bar to invoke such jurisdiction. To quote from the judgment:

"No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial."

6. The third judgment cited above is also regarding the jurisdiction of the High Court under Section 482 of the Cr.P.C. and it is held that even while application for discharge of the accused is pending with the trial Judge, the High Court can entertain the petition under Section 482 of the Cr.P.C., but such powers should be exercised cautiously to prevent abuse of process of Court. To quote from the said judgment:

"In the present case, the whole attempt of the complainant is evidently to rope in all the members of the family particularly the appellants who are the parents of the Managing Director of the Automobile Company without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 1 38 is proved against them. In any case, there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed. Accordingly, the judgment of the High Court is set aside and prosecution of the appellants under Sections 406/420 IPC is quashed."

"…. Though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial."

7. The 4th judgment cited above is also regarding the powers of the High Court under Section 482 of the Cr.P.C. and it has been decided in a case relating to the charge of corruption particularly pertaining to possession of wealth disproportionate to the known sources of legitimate income under Sections 13(1)(d) r/w.13(2) of the Prevention of Corruption Act and Section 120-B of the IPC wherein the appellant had been discharged by the trial Court. But, in revision, the High Court, using power under Section 482 of the Cr.P.C. set aside the order of the trial Court insofar as it related to the appellant and directed the Special Judge to frame charges against him. Setting aside the High Court's impugned order, the Honourable Supreme Court has held:

"Section 482 Cr.P.C confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. Every court has inherent power to act ex debito justitiae - to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court. The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. The section has been embodied to cover the lacunae which are sometimes found in the procedural law. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

8. The 5th judgment cited is one wherein the allegations in the FIR did not made out the offence of cheating or criminal breach of trust and the attendant circumstances indicated that FIR was lodged to pre-empt the filing of complaint under S.138 of Negotiable Instruments Act against the appellant, the Honourable Apex Court has held that ` the High Court was well within its jurisdiction to quash the FIR as amounting to abuse of process of Court.'

9. In the last judgment cited, in a case of Trust created with one of the members of settlor's family as one of the trustees, the complaint against the trustee and office bearers for offences under Sections 406,467 etc. was quashed by the High Court against two pesons since the alleged breach of trust constitute only the civil wrong thus quashing the proceedings and upholding the said version of the High Court, the Honourable Apex Court has held:

"The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

Citing the above judgments, the learned senior counsel for the petitioner would end up his arguments praying for the relief extracted supra.

10. On the part of the respondent State, the learned Public Prosecutor (Pondicherry) would generally allege that based on the information offered by the Director of Prosecutions and the Superintendent of Police, Vigillance and Anti Corruption Unit, the charge-sheet has been laid against all the accused No.1 to 4 for offences triable under Sections 468,471 and 419 r/w.34 IPC and Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 and therefore since the charge-sheet has been filed, it is a case that is anticipating trial and in the trial only it will be able to be found whether the petitioner has really committed any offence and hence no interference at this stage is either necessary or called for and would pray to dismiss the above criminal original petition.

11. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned senior counsel for the petitioner and the learned Public Prosecutor (Pondicherry), what comes to be known is that a case has been registered by the respondent Inspector of Police, Vigillance and Anti Corruption, Pondicherry on behalf of the State against four accused, of whom the petitioner is the second accused, when she was serving as the Director, Department of Women and Child Development, Pondicherry, on the complaint lodged by one Ravichandran on allegations that all the accused joining hands with each other and conspiring with intent to defraud the Government and the defacto-complainant as well for illegal encroachment of his plot by unlawful methods and forged documents, created a forged registered power deed with the Sub Registrar, Oulgaret as though one Gnananandam had executed the same and the accused 2 to 4 assisted the first accused to crate a sale deed in favour of her daughter and in the course of the said act, the third accused, influenced by the second accused, who at that time was working as Commissioner at Oulgaret, registered the instrument and issued the Encumbrance Certificate so as to enable the first accused to meet her personal ends and the acts of all the accused would amount to criminal misconduct.

12. The respondent herself has not only registered the FIR in her Cr.No.8/2000 on 27.10.200 under the above provisions of the IPC and the Prevention of Corruption Act but also has taken up the investigation herself

and having recorded the statements of witnesses and doing such acts during the course of investigation in the facts and circumstances of the case, is also said to have obtained legal opinion from the Directorate of Prosecution, Law Department and obtaining the legal opinion through the Superintendent of Police (Vigillance and Anti Corruption) Unit, would ultimately lay the

charge-sheet against all the four accused for the commission of offences punishable under Sections 468,471,419 r/w.34 IPC and under Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1985.

13. A perusal of the connected records and the case diary would reveal that the allegation of the complainant is that the first accused with intent to acquire plot No.16 belonging to one Ravichandran and situated adjacent to her property, created a forged power of attorney as if it had been executed by one Gnananandam, the previous owner of the said plot and for achieving this, the petitioner is alleged to have made use of her influence with the third accused in favour of her sister to register the power of attorney as a document for which the fourth accused is said to have attested the sale deed as a witness on the basis of the forged power of attorney.

14. From among the IPC sections, Sections 468 and 471 would contemplate creation of forged document and using the same knowing it to be a forged one and Section 419 is the penal Section for cheating by personation. Under these Sections read with Section 34 of the IPC, the charges are contemplated though the FIR was registered for these offences of the IPC coupled with Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 and therefore the respondent/the Inspector of Police, Vigillance and Anti Corruption has not only registered the case but also investigated the matter and chargesheeted the same under only the IPC Sections.

15. It is relevant to point that it is the settled law that the respondent/Inspector of Police could register the case, investigate into and charge-sheet those cases involving corruption falling under the Prevention of Corruption Act and under the relevant provisions of the IPC concerned along with the cases of corruption in which event the respondent/police would also either register the case or investigate into or even file the charge-sheet against the accused therein for other offences punishable under the provisions of the IPC or any other criminal law but without being accompanied by the corruption charges or basically the case not being made out for being tried under the corruption laws independently, the respondent/police being attached to the Vigillance and Anti Corruption wing, cannot deal with either the IPC Sections alone or regarding any other provision of law other than the corruption laws and therefore basically for gaining jurisdiction, the case must be one under the corruption laws also. But, peculiarly enough, the respondent/Inspector has charge-sheeted the case against all the accused only under the IPC without any provision of the Corruption Act or the Sections of the IPC dealing with corruption the case being made out and therefore the respondent police is bereft of the jurisdiction to file the said charge-sheet as it has been done in the case in hand dealing with only under the IPC sections other than corruption charges.

16. Even regarding the registration of the case, basically though the respondent Inspector is empowered to register the case as she has done in the case in hand, since at the time of registration it was registered not only under the IPC Sections but also under Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988, but, normally the Inspector of Police who registers the case under the corruption laws cannot investigate into and the investigation has to be held only by some other Officer having competent jurisdiction and if it is a trap case, by a Deputy Superintendent of Police, who is higher in rank than that of the Inspector of Police. But, contrary to these norms established by the legal propositions, the respondent/Inspector has not only registered the case but also has taken up the investigation herself and has also chargesheeted the matter without any case being made out under the corruption laws and since being a special wing, the Inspector attached to the Vigillance and Anti Corruption Department, the respondent, has no jurisdiction to file the charge-sheet in a matter wherein no corruption charge is involved at all which is the power to be exercised by the regular police having jurisdiction over the subject matter.

17. Coming to the other legalities, particularly regarding the case registered, investigated into and the charge-sheet filed against the petitioner herein, it is an admitted fact that the petitioner was at the time of registration of the case the Director of the Women and Child Development Department, Pondicherry and to register a case basically, since being an Officer who could not be removed from out of the office, save only by the Government, her case falls under Section 19 7 of the Cr.P.C. and this sanction does not seem to have been obtained prior to laying the charge-sheet from the competent authority i.e. the Government of Pondicherry, which is a serious legal lapse committed on the part of the respondent State in general and the respondent Inspector in particular. Moreover, legal norms require that in such event against an Officer higher in rank such as the petitioner, the case itself could be registered only by an Officer higher in rank than the petitioner and observing such formalities of getting the prior permission from the Head of the Department. These legal norms seem to have been thrown to the winds in the case of the petitioner not only in registering the case against her but till the charge-sheet laid and the respondent seems to have been aware of these norms and procedures established by law.

18. Regarding the facts also, there is no direct allegation against the petitioner for any of the criminal acts perpetrated on her part either in the preparation of the document alleged to have been made up falsely or in the same getting registered by the third accused/ Registrar, much less an act perpetrated knowingly and intentionally. It is ridiculous to understand that an officer of the stature of the Inspector of Police could go up to the extent of registering the case without prima facie proof for such assistance or connivance or influence exercised. The respondent/Inspector of Police cannot simply register a case against officers of such category nor in the name of investigation prolong the same for years together nor based on one or two unreliable statements of witnesses recorded under Section 161 of the Cr.P.C. could file the charge-sheet particularly without any iota of material evidence being placed on record for such drastic conclusion to be arrived at to charge-sheet the petitioner particularly when the opinion offered by the

Director of Prosecutions is quite against filing of the charge-sheet against the petitioner also. To quote from the opinion of the Director of Prosecutions:

"FIR has been laid u/s.468,471,419 of IPC and Section 13(i)(d)(ii) of POC Act 1988 and it is felt that the materials available make out a case u/s.469,471,109 r/w.419 of IPC r/w.34 of IPC as against A1 and A4 only and the prosecution of the accused persons A2 and A3 would be futile exercise for the following reasons:

1)So far as A2 is concerned there is lack of material for her active connivance in the commission of the offence by A1 and A4. ... Therefore it could not be true that A2 influenced the said official either to register a case against one Rajagopal S/o Chandiran of Ellaipillaichavady or to support A1.

2)Secondly, none of the witnesses had spoken about the fact of A2 influencing A3 in issuance of Encumbrance Certificate in favour of one Kuppusamy S/o.Munisamy since A3 had specifically denied any such influence and stated that the said document was issued as a matter of routine and also had not stated anything specific about any recommendation by A2 in registering the power deed and the sale deed by A1.
3) ....
4) There is no material available to establish the connivance or participation of A2 either in the preparation of documents such as the sale deed and power deed by A1 and A4 and the mere statement of A4 that A2 had requested him to sign in the documents as a witness would not suffice unless there is specific evidence to prove that A2 forced him to attest the documents by using official pressure with the knowledge that the documents are fabricated.
5) ....
6) ....
7) The identity of the person who had actually impersonated as one Gnananandham S/o Latchumanan had not been fixed in the investigation except for the evidence that the thumb impression found under the power deed dated 29.1.1997 does not belong to A1 and A4 and there is no evidence available as to who had actually impersonated as one Gnananandham on the date of the registration of the said document. Therefore, Section 419 of IPC is not attracted. With the evidence available, A1 and A4 can be prosecuted only u/s.s109 IPC r/w.419 of IPC r/w.34 of IPC.

8) Therefore, the material as it is available would make out a case u/s.468,471,109 IPC r/w.419 r/w.34 of IPC only as against A1 and A4 and accordingly a draft charge-sheet is parted with as against them under the above referred sections."

19. The Superintendent of Police (Vigillance and Anti Corruption) Unit has gone into the subject further and it is noted as remarks in the following manner:

"S.P.(VAC) Unit
Remarks: 1) There is no complaint from the originally aggrieved party by name

Ravichandiran and as per records his ownership and possession of plot No.16 of Ellaipillaichavady is with him and the Registration Department which claims to be aggrieved by the act of A1 and A4 for registering a fabricated document had proceeded to accept the cancellation of the registration of the very same document which would mean that the grievance no longer exists. This fact may vitiate the prosecution of the accused."

20. In these circumstances, how the respondent is able to bring the petitioner also in the charge-sheet is not only a mystery but does not seem to be a desirable act nor warranted in the facts and circumstances of the case since under no stretch of imagination in the above case, a charge-sheet could be laid against the petitioner nor maintained. The prosecution is absolutely bereft of the source of evidence and therefore no such charge-sheet against the petitioner could be legally filed by the respondent and in these circumstances, the only option left with this Court for a decision to be made in the above criminal original petition is to conclude that there is no justification on the part of the respondent to have filed the charge-sheet against the petitioner and in result the above criminal original petition could only be allowed quashing the proceeding so far as it is concerned with the petitioner.

In result,
(i)the above criminal original petition is allowed.
(ii)The proceedings in Cr.No.8/2000 of the respondent are quashed in so far as the petitioner is concerned.

Consequently, Crl.M.P.No.866 of 2003 is closed.

Index: Yes
Internet: Yes
Rao

To

1.The Inspector of Police,
Vigillance & Anti-Corruption Unit,
Pondicherry.

2.The Special Judge,
Pondicherry.

3.The Public prosecutor (Pondicherry)
High Court, Madras.